

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:)	
)	
THE KRYSTAL COMPANY, <i>et al.</i>,)	Chapter 11
)	
Debtors.)	Case No.: 20-61065-(PWB)

**OBJECTION OF LAKE POINT KB, LLC
TO DEBTORS' FIRST OMNIBUS MOTION FOR ORDER
APPROVING REJECTION OF CERTAIN NONRESIDENTIAL LEASES**

Lake Point KB, LLC ("**Lake Point**") files this objection to Debtor's First Omnibus Motion for Entry of Order Approving its Rejection of Certain Unexpired Real Property Leases pursuant to 11 U.S.C. § 365 (the "**Motion**"), respectfully showing the Court as follows:

1. Lake Point is the landlord, and debtor The Krystal Company (the "**Debtor**") is the tenant under a real property lease dated May 2, 2016 (the "**Lease**") for certain property located at 185 Lakepoint Parkway, Cartersville, Georgia 30121 (the "**Property**"), where the Debtor has operated a restaurant known as Krystal # ATL062.

2. Upon information and belief, the Debtor has attempted to sublease the Property to a third party without Lake Point's consent and without notice to Lake Point, in violation of the Lease. Upon information and belief, the Debtor has collected and continues to collect rental income from the purported subtenant, which continues to occupy the Property.

3. In the Motion, the Debtor seeks to reject the Lease *nunc pro tunc* to the Petition Date, however, the Debtor has not vacated the Property and surrendered it to Lake Point, as required for such relief. *See In re Manis Lumber Co.*, 430 B.R. 269 (2009) (holding that *nunc pro tunc* rejection may be appropriate when premises surrendered and landlord can begin reletting process).

4. To the contrary, Lake Point was not able to re-lease the Property as of the Petition Date and is still not able to do so. Meanwhile, the Debtor continues to receive a benefit from the Property to the extent of its rights to collect rent from its purported subtenant.

5. Accordingly, Lake Point is entitled to an administrative priority claim and timely payment of post-petition rent until such time that the Debtor surrenders the Property to Lake Point. *See id.*; 11 U.S.C. §§ 365(d)(3); 503(b)(1).

6. Accordingly, the Court should deny the Motion to the extent it seeks to reject the Lease and require the Debtor to make timely post-petition rent payments to Lake Point until such time that the Property is surrendered to Lake Point.

Dated: February 12, 2020

Respectfully submitted,

ROUNTREE, LEITMAN & KLEIN, LLC

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CERTIFICATE OF SERVICE

I certify that on February 12, 2020, I caused a copy of the foregoing pleading to be filed via the Court's CM/ECF system, which generated an email notification of same, which was sent to the following parties:

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